UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF VANCE IKEZOYE
PALO ALTO, CALIFORNIA
THURSDAY, SEPTEMBER 10, 2009

JOB NO. 17619

5b42e2a0-a4a9-408b-94f2-106d4b6f6ce5

SEPTEMBER 10, 2009

9:40 a.m.

VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,
WILSON SONSINI GOODRICH & ROSATI,
650 Page Mill Road, Palo Alto, California,
pursuant to notice, and before me,
ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR
License No. 9830.

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A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP
By: MICHAEL DeSANCTIS, Esq.
LUKE PLATZER, Esq.
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
(202) 639-6000 mdesanctis@jenner.com

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
By: BENJAMIN GALDSTON, Esq.
12481 High Bluff Drive, Suite 300
San Diego, California 92130-3582
(858) 720-3188 beng@blbglaw.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP
By: MAURA REES, Esq.
650 Page Mill Road
Menlo Park, California 94304
(650) 493-9300 mrees@wsgr.com

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A P P E A R A N C E S (Continued.)

FOR THE DEPONENT:

BLY LAW FIRM, PC
By: William Bly, Esq.
11601 Wilshire Boulevard, Suite 500
Los Angeles, California 90025
(888) 893-6189

ALSO PRESENT: Kelly Truelove, Consultant
Armando Carrassco, Videographer.

---oOo---

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IKEZOYE, V.

PALO ALTO, CALIFORNIA

THURSDAY, SEPTEMBER 10, 2009

9:40 A.M.

09:43:26 THE VIDEOGRAPHER: Today's video deposition of Vance Ikezoye is taken on September 10th, 2009, at Wilson, Sonsini, Goodrich & Rosati, 601 South California Avenue, Palo Alto, California. In the Matter of Viacom International vs. YouTube, Incorporated, and The Football Association.

Case No. is 07-CV-2203 and 07-CV-3502, in the Court of Southern District of New York.

My name is Armando Carrasco. I represent David Feldman Worldwide located at 600 Anton Boulevard, Suite 1100, in Costa Mesa, California.

We are now commencing at 9:40 a.m.

Will all -- all present please identify themselves, beginning with the witness.

MR. IKEZOYE: Vance Ikezoye, CEO of Audible Magic Corporation.

MR. BLY: I'm Bill Bly of Bly Law Firm. I'm representing the witness and Audible Magic.

MS. REES: Maura Rees of Wilson, Sonsini,

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Goodrich & Rosati representing the YouTube defendants.

MR. GALDSTON: Good morning.

Benjamin Galdston of Bernstein, Litowitz, Berger & Grossmann on behalf of the Plaintiffs in the Class Action.

MR. TRUELOVE: Kelley Truelove, consultant for Viacom plaintiffs.

MR. PLATZER: Luke Platzer of Jenner & Block for the Viacom plaintiffs.

MR. DESANCTIS: I'm Michael DeSanctis of Jenner & Block for the Viacom plaintiffs.

THE VIDEOGRAPHER: Thank you.

Will the court reporter please swear in the witness.

VANCE IKEZOYE,

having been sworn as a witness,

testified as follows:

EXAMINATION BY MR. DESANCTIS

MR. DESANCTIS: Good morning.

Q Would you please state and spell your name for the record.

A Vance Ikezoye, I-K-E-Z-O-Y-E.

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copyrighted music, and then we also sell services to various digital media companies, like Web 2.0 social networks, to identify copyrighted content that is being uploaded by users.

Q Looking at the last of the services that you just mentioned, the digital -- the work that you do for digital media services, when did YouTube -- sorry -- when did Audible Magic begin providing those kinds of services?

A To Web 2.0 companies or to just anybody in the space?

Q Let's just start generally with anybody in the space.

A We started providing some of the services to the peer-to-peer companies in, I believe, 2004, in the 2004 time frame, and for those companies we helped the peer-to-peer companies identify content that their users were introducing into their networks.

Q Okay. In the 2004 time frame that you're talking about, was your client base primarily peer-to-peer services?

A Yes.

Q Can you describe -- well, actually strike that.

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09:52:33 Can you identify who some of those
09:52:35 peer-to-peer services were? Who were your customers
09:52:38 in the 2004 time frame?
09:52:42 A Yes. Yeah, iMesh was one of our customers
09:52:50 who was a peer-to-peer company, and later we had --
09:52:54 Kaza was a customer of ours.
09:52:56 Q And what exactly is a peer-to-peer service?
09:53:00 A A peer-to-peer service is a peer-to-peer --
09:53:02 it's an application that allows the sharing and
09:53:08 transmittal of -- of copyrighted files between users.
09:53:15 Similar to Naps- -- the way Napster originally was.
09:53:20 So users could download this application, download
09:53:24 files, copyrighted movie and music files, and then
09:53:28 also they can make those available to other users.
09:53:34 Q Did there come a time when Audible Magic
09:53:37 began providing these -- these copyright
09:53:47 identification services to digital media services
09:53:49 other than peer-to-peer networks?
09:53:51 A Yes, we did do that.
09:53:53 Q Okay. Can you describe how or the type of
09:53:58 customer that Audible Magic next started servicing?
09:54:03 A We started servicing some of the more -- the
09:54:06 classic Web 2.0 social network companies, where some
09:54:12 people call it user-generated content, where users may

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have audio or video files, and they upload these files to websites, and these websites then allow other users to stream and to view or listen to the content.

Q Do you recall who Audible Magic's first customer was in the social networks base?

MS. REES: Objection; vague and ambiguous.

THE WITNESS: Our first customer that we announced was MySpace.

MR. DESANCTIS: Q. Do you recall when that announcement was?

A The -- the first quarter of 2007.

Q Did additional customers -- actually, when I say "customer" -- do you prefer customer or client?

A Customer is fine.

Q Okay. Did additional customers follow MySpace?

A Yes.

Q And who -- what was the next customer in this space that Audible Magic began providing services to?

MR. BLY: Objection to the extent that it calls for confidential information.

You can talk about the ones that are publicly announced.

THE WITNESS: Right.

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09:55:45 Other customers were YouTube, Sony Pictures had a website called Grouper. Microsoft had Soapbox, was a customer. In total, I believe we had over -- over the period of 30 plus customers.

09:56:15 MR. DESANCTIS: Q. When you say "over the period," what period are you talking about?

09:56:18 A From -- from 2006 through today.

09:56:26 Q And when you say "30 plus customers," do you mean 30 plus customers in the social network space that you were describing, or are you now talking about a broader space of clients?

09:56:41 A No, the Web 2.0 social networking space.

09:56:47 Q Okay. Who are Audible -- Audible Magic's primary competitors for content identification services in the Web 2.0 space?

09:57:12 A It changed over time, but some of the people -- some of the companies that were in the space were Gracenote, Volvo, Auditude, and there are probably other customers that I can't remember names of.

09:57:35 Q Do you know whether Audible Magic does more business in the Web 2.0 space than any of the competitors you named?

09:57:43 A It's my belief. I'm not aware of anybody

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that has anything close to our customer base.

Q And has that -- has that always been your belief? In other words, does that extend back to 2006, or was there a time when there was a competitor who had a larger customer base in the 2.0 space than Audible Magic had?

A I believe from the very beginning we were -- we were the leader in the space.

Q We'll obviously be talking more about this as the day goes on, but can you describe, in a very general sense, what it is Audible Magic does for its digital media customers when you've said "identify copyrighted content"?

A We use a technology called fingerprinting, and what fingerprinting is, is a mechanism to uniquely identify a piece of copyrighted content.

There are -- these fingerprints are measurements of the content that become unique to a sound recording or to a soundtrack or to a -- an image, and so we work with copyright holders to register their works so we know what known content is. We take these measurements, and then we put these measurements into a database.

Then with our customers, the UGC sites, we

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give them software to take measurements of unknown content, and when -- after they take these measurements, then we can compare it to our database of known references and identify and match the content.

The way we provide services to the Web 2.0 customers is, they do have software. Users may upload content to these sites, and they use our services to -- to identify the -- the -- the copyrighted content using our services.

Q In your answer you spoke of Audible Magic and the customer taking measurements of pieces of content. Is that the fingerprint that you mentioned first, or is the measurement something other than the fingerprint?

I'm just trying to make sure we have the same terminology.

A It's the fingerprint. The fingerprint is a series of measurements of characteristics of a piece of audio or video.

Q Okay. And are you familiar with the fact that there are fingerprints referred to as "audio fingerprints" and others referred to as "video fingerprints"?

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A Yes.

Q Could you explain what the difference is, not in hypertechnical terms, but generally.

A Well, audio fingerprints are taking measurements of the -- the sound -- the sound on a -- on a piece of content, whether it's music or speech or silence or sound effects. Video fingerprints tend to refer in -- in kind of, from my perspective, as fingerprints of the images of the video image itself.

Q I'll show you, Mr. Ikezoye, a document that we're going to be marking as Ikezoye Exhibit 1.

(Document marked Ikezoye Exhibit 1 for identification.)

MR. DESANCTIS: I'll ask you to take a quick look at it.

Q Do you recognize this document?

A Yes.

Q What is it?

A It was a declaration that -- that I provided for a case regarding Aimster.

Q On the last page of the exhibit, is that your signature?

A Yes.

Q And this was signed by you on September 10th,

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10:03:21 2002; is that correct?

10:03:22 A That's correct.

10:03:24 Q Was Audible Magic a party in the Aimster

10:03:30 litigation?

10:03:32 A No.

10:03:32 Q Do you recall why it was that you submitted

10:03:34 this declaration if Audible Magic was not a party?

10:03:36 A That we provide technology and services that

10:03:40 were relevant to the -- to the -- the technical issues

10:03:47 regarding this litigation, and so we provided this

10:03:52 information to make people aware of some of our

10:03:54 services.

10:03:55 Q And have you looked at this declaration since

10:04:10 you filed it in September of 2002?

10:04:13 A No.

10:04:13 Q Okay. I'm gonna ask you to just very quickly

10:04:18 review it and let me know if there is anything in here

10:04:22 that -- that you now think was not true or accurate

10:04:30 when it was submitted or whether you still think

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10:04:47 MR. BLY: You're asking whether it was true

10:04:49 at the time, not whether anything has changed since?

10:04:51 MR. DESANCTIS: Right. Obviously things

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might have changed since, but...

THE WITNESS: Okay.

MR. DESANCTIS: Q. As you look at this today, is there any reason that you believe that anything in here was not accurate at the time it was filed?

A No.

Q Okay. Just put that aside for the moment.

Showing you, Mr. Ikezoye, what I'm marking as Ikezoye Exhibit 2.

(Document marked Ikezoye Exhibit 2 for identification.)

MR. DESANCTIS: I'd ask you to take a moment to familiarize yourself with this document.

THE WITNESS: Okay.

MR. DESANCTIS: Q. Do you recognize this document?

A Yes.

Q What is it?

A It's a declaration that we made in the MGM vs. Grokster case.

Q And was Audible Magic a party in the case?

A No, we were not.

Q Do you recall, then, why Audible Magic

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THE WITNESS: Okay.

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A Yes.

Q What is it?

A It's a declaration that we made in the MGM vs. Grokster case.

Q And was Audible Magic a party in the case?

A No, we were not.

Q Do you recall, then, why Audible Magic

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submitted -- or why you submitted this declaration in that case?

A Because we, again, we wanted to make -- grow awareness of our services and our capabilities to the market.

Q If you could flip to the last page. It's dated February 2, 2006, and is that your signature underneath it?

A Yes, it is.

Q Okay. I'm going to ask you the same question that I asked you about the last document, which is, is there -- as you sit here today, is there any reason to think that anything in this declaration was inaccurate at the time it was submitted? And if you want to take a minute to look through it again, feel free.

A Okay.

Q Then, as you sit here today, Mr. Ikezoye, is there any reason to -- that you know of why anything in this -- or let me withdraw that and rephrase.

As you sit here today, do you have any reason to believe, Mr. Ikezoye, that anything in that declaration was inaccurate at the time it was submitted?

A No.

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10:09:17 Q Direct your attention to paragraph 18 of the
10:09:29 exhibit, which is on page five. The last sentence of
10:09:39 that paragraph states, "The Audible Magic iMesh filter
10:09:44 has scaled seamlessly to 5 million lookups per day and
10:09:50 easily could scale to meet the needs of any network in
10:09:52 use today."
10:09:53 Can you first explain what the Audible Magic
10:09:57 iMesh filter was that you were talking about here in
10:09:59 this paragraph?
10:10:01 A We had provided iMesh a -- software and
10:10:09 services that they integrated in their software
10:10:14 application that users used, and so the service was to
10:10:21 identify content that was being uploaded or downloaded
10:10:25 within this network.
10:10:27 Q And iMesh -- is iMesh an example of one of
10:10:34 the Web 2.0 sites that we were talking about earlier
10:10:36 this morning?
10:10:37 A No, it's a peer-to-peer network, file sharing
10:10:40 network provider.
10:10:42 Q Okay. And what does it mean or what did you
10:10:46 mean when you said "the filter has scaled seamlessly
10:10:50 to 5 million lookups per day"?
10:10:56 Actually, let me break that down. Let's
10:10:58 start with, what does "5 million lookups per

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10:11:02 day" mean?

10:11:04 A It means a lookup is when we have -- we're
10:11:08 presented with an unknown file and we're looking that
10:11:11 up and trying to match the characteristics against a
10:11:14 database of known content. So one lookup is one
10:11:18 unknown file being -- trying to be identified.

10:11:22 Q Okay. Let me just try to make sure I
10:11:24 understand that.

10:11:25 Who submits the unknown file to Audible
10:11:29 Magic?

10:11:31 A The iMesh application. So millions of users
10:11:35 had the iMesh application, piece of software running
10:11:38 on their computers. Our library was integrated in
10:11:43 that piece of software that users used, and so the
10:11:49 application automatically, when a file was gonna be
10:11:54 shared or was downloaded, we would take measurements
10:11:59 and then the application itself would automatically go
10:12:02 do a lookup against our servers. So users didn't have
10:12:07 to operate -- it was all operated within --
10:12:09 automatically within the software itself.

10:12:13 Q So when measurements were taken of -- of a
10:12:40 file to be downloaded on iMesh, does that mean -- is
10:12:44 that the same way of saying a fingerprint was made of
10:12:46 the file?

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10:12:47 A Yeah, a fingerprint was taken, as well as
10:12:49 other information about the file --
10:12:51 Q Okay.
10:12:52 A -- and we --
10:12:53 Q What other information was taken?
10:12:55 A I believe we would take the -- the metadata
10:12:59 title of the -- the file, and I also believe that we
10:13:03 would take a -- a -- information -- a hash of the
10:13:08 file.
10:13:08 Q Okay. An MD5 hash?
10:13:12 A Yes.
10:13:12 Q And what then, if anything, would Audible
10:13:17 Magic compare that fingerprint and additional
10:13:19 information against?
10:13:21 A We had a database of -- of fingerprints, as
10:13:28 well as associated MD5 hashes, and so we would compare
10:13:35 that against known hashes and then also known
10:13:39 fingerprints.
10:13:42 Q And at that time, what fingerprints were in
10:14:01 your database of fingerprints?
10:14:09 A At the time, according to this, it looks like
10:14:11 we had about 6 million copyrighted songs in our
10:14:15 database. So fingerprints were about that many songs.
10:14:18 Q And from whom were those fingerprints

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provided?

A The music -- music labels, both the major music labels -- Sony, BMG, Universal, Warner, and EMI -- as well as a number of independent record labels.

Q Okay. So continuing through the process, what would happen if a file to be downloaded on iMesh matched the fingerprint of a fingerprint that was in your database having been supplied from a record company?

A We would get the identification after the fingerprint was submitted to our central servers, and we would respond to that client with an identification that said a -- with a block or allow rule, and for everything in the database, at this time, everything in the database had a block rule, and so we would tell the -- the client to block that file from being downloaded or uploaded.

Q Okay. When you said everything in the database had a block rule, who made that rule?

A The record label themselves when they submitted it.

Q Okay. So the record label would provide instructions as to whether -- whether the file to be

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10:40:23 Q Okay. Are they all in one big database or
10:40:25 are there different databases?
10:40:29 A We have a -- a -- a main database that
10:40:33 contains all of the content submitted by copyright
10:40:37 holders, so we have one master database. We also have
10:40:44 other smaller databases that are -- contain subsets of
10:40:51 that master database that are used in different
10:40:54 applications or with different customers.
10:41:01 Q Does that master database or main database
10:41:03 have a particular name that I should use so that we
10:41:06 know we're talking about the same thing?
10:41:08 A We can call it a "master database."
10:41:10 Q Okay. Is there something called a commercial
10:41:29 music database or commercial music library?
10:41:32 A Yes. It's -- we refer to our -- all of our
10:41:40 fingerprints or registrations of -- from the music
10:41:44 labels as our commercial music database.
10:41:47 Q Okay. So what fingerprints populate -- what
10:41:50 types of fingerprints would populate the commercial
10:41:53 music database?
10:41:54 A They are fingerprints of commercially
10:41:56 available musical sound recordings received from
10:42:03 record companies, majors and independents.
10:42:07 Q Approximately how many fingerprints -- or

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show, those would each be unique titles in our database.

Q Okay. Let's go back to the libraries we were discussing a moment ago.

When did Audible Magic first create the commercial music library?

A It probably started in -- where we acquired most of the content in 2002 or 2003.

Q And when did Audible Magic begin populating the TV movie database?

A Probably, early 2006 we started with -- we started that effort.

Q Can you describe how that effort was started.

A We were working on a video fingerprinting technology and needed some sample files to begin to use to -- for testing, and so we used DVDs to generate some of the fingerprints.

(Document marked Ikezoye Exhibit 4 for identification.)

MR. DESANCTIS: Let me show you, Mr. Ikezoye, what has been marked as Ikezoye Exhibit 4.

MR. BLY: Michael, if I could interrupt here for a moment. When we were prepping for the deposition yesterday, we realized that there were a

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of the works deployed for a particular application or a customer.

In some cases, certain customers, as an example, might only want to search a music database and not a film and television database, therefore we only extract from the master database the music fingerprints to be deployed.

Q When a customer submits a lookup fingerprint for matching purposes, does the customer select or is it up to the customer to dictate what fingerprints and what databases that lookup will be matched against?

A Yes. In our business model, the customer, the -- the site, the Web 2.0 customer, the UGC site pays us, and in that -- in that agreement, we -- the -- the customer tells us what databases to deploy, even what fingerprints, and what titles to deploy.

Q Are there some customers who instruct Audible Magic when they submit a lookup fingerprint to -- to run that fingerprint for matching purposes against the entirety of the, say, the film and TV database?

A Yes.

(Document marked Ikezoye Exhibit 5 for identification.)

MR. DESANCTIS: Let me show you what's marked

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Do you recall when Audible Magic and YouTube first discussed a -- a customer relationship?

A I believe the first contact between Audible Magic and -- and YouTube were in the first half of 2006.

Q And do you recall whether YouTube first reached out to Audible Magic or whether Audible Magic first reached out to YouTube?

A I believe YouTube reached out to Audible Magic as a -- and I think they were referred to us by Warner, somebody from Warner Music Group.

Q Before your first contact with YouTube, had you had any discussions with -- with others about -- about obtaining YouTube as a customer?

A With others?

Q Perhaps the MPAA. Did you have -- do you recall any conversations with anyone at the MPAA about --

A I don't recall. It could have happened, but I don't recall.

Q Okay.

(Document marked Ikezoye Exhibit 6 for identification.)

MR. DESANCTIS: Q. Let me show you,

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12:01:17 Mr. Ikezoye, what's been marked as Ikezoye No. 6.
12:01:23 Take a moment to look this over, and I'll state for
12:01:26 the record, in the meantime, that this is a -- what
12:01:29 has been marked as Exhibit 6 is a two-page document
12:01:34 bearing the Bates Nos. AM2090 through 2091.
12:01:48 A Okay.
12:01:52 Q Do you recognize this, Mr. Ikezoye, as an
12:01:55 e-mail from Chris Maxcy to Michael McTeague and CCing
12:02:03 Jim Schrempp and you?
12:02:07 A Yes.
12:02:07 Q Do you recall this particular e-mail?
12:02:11 A Not specifically. Not specifically.
12:02:16 Q If you turn to the second page, it actually
12:02:21 begins at the very bottom of the first page, the
12:02:24 e-mail from Chris Maxcy dated April 4, 2006, to you.
12:02:31 It begins, "Hi, Vance. George White at Warner Music
12:02:34 forwarded your contact information to me. I had a
12:02:37 business development for YouTube and would be
12:02:39 interested in speaking with you or someone on your
12:02:41 team about partnership opportunities between Audible
12:02:43 Magic and YouTube."
12:02:45 As far as you recall, Mr. Ikezoye, was this
12:02:48 the first contact between Audible Magic and YouTube?
12:02:55 A Yes.

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12:05:06 At some point, YouTube did actually begin
12:05:09 using Audible Magic's content identification services;
12:05:12 correct?
12:05:13 A Yes.
12:05:14 Q Do you recall when it was that YouTube went
12:05:21 live with the service, so to speak, and actually
12:05:24 started using Audible Magic for content ID purposes?
12:05:28 A I believe early 2007.
12:05:31 Q Okay. And do you recall when it was or was
12:05:44 there a time between April 2006 and early 2007 when
12:05:50 YouTube began testing, in some way, the Audible Magic
12:05:57 service?
12:05:57 A Yes, I believe July or August of 2006 we had
12:06:05 issued a test license agreement to YouTube, and the
12:06:11 technical teams were doing some evaluation.
12:06:19 Q Do you recall -- do you recall what happened,
12:06:23 if anything, in between July 4th, 2006, and July or
12:06:29 August -- I'm sorry. Let me back up. I misspoke.
12:06:35 Do you recall what, if anything, happened
12:06:39 between Audible Magic and YouTube between April 4,
12:06:45 2006, the date of this e-mail, and July or August of
12:06:49 2006 when YouTube began testing Audible Magic's
12:06:52 services?
12:06:53 A I believe there were various meetings and

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12:14:36 Q Okay. And is it also the case that you don't
12:14:40 remember who any specific conversations would have
12:14:44 been with?
12:14:45 A My guess, it would be with George White.
12:14:48 George White was a general contact of -- of ours at
12:14:51 Warner Music related to these kinds of deals.
12:15:43 MR. DESANCTIS: Okay. Can I ask the court
12:15:45 reporter how much time is remaining on this tape?
12:15:48 THE VIDEOGRAPHER: We have 15 minutes.
12:15:52 MR. DESANCTIS: Okay.
12:16:05 (Document marked Ikezoye Exhibit 8
12:16:06 for identification.)
12:16:06 MR. DESANCTIS: Q. Let me show you what has
12:16:11 been marked, Mr. Ikezoye, as Ikezoye Exhibit No. 8.
12:16:15 This is a multi-page document beginning with Bates
12:16:19 No. AM917 through 928. I'll ask the witness to take a
12:16:50 look through the document, which I'll note for the
12:16:53 record he's doing.
12:16:54 A Yes.
12:16:54 Q Do you recognize this, Mr. Ikezoye, as a --
12:17:01 the topmost document, as an e-mail from Franck
12:17:07 Chastagnol to Jim -- Jim Schrempp, CCing you and
12:17:12 others, dated September 18th, 2006?
12:17:14 A Yes.

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12:17:14 Q Okay. Do you know who Franck Chastagnol is?

12:17:21 A I believe he was a -- the technical contact at YouTube for the integration of Audible Magic into their services.

12:17:31 Q Was he the principal contact for Audible Magic at YouTube?

12:17:36 A I believe he was.

12:17:38 Q Okay. Did you have discussions directly with Mr. Chastagnol about the integration of Audible Magic with YouTube?

12:17:48 A No, he was -- he was our technical contact.

12:17:49 Q Okay. And who at Audible Magic would have been -- would have had those discussions with Mr. Chastagnol about the technical integration of the two systems?

12:17:52 A Jim Schrempp, our VP of engineering at the time, would have been the prime contact at this point in the -- in the relationship with YouTube.

12:17:58 Q Okay. In about the middle of this page is a bold heading that reads "Requirements for integration with Audible Magic Phase I database set up."

12:18:00 And this appears to continue for -- onto the third page. Do you know what this part of the document is?

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12:18:47 A It appears to be a document that lays out
12:18:52 specifications for the integration of our services
12:18:59 with YouTube.
12:19:06 Q Let me direct your attention to the bottom of
12:19:33 the first page. There's a bold heading "Fingerprint
12:19:38 match API." What does "API" mean?
12:19:41 A Application Programming Interface.
12:19:42 Q And what is that?
12:19:44 A It is a definition for the way computer
12:19:49 programs communicate and interact, so it's an
12:19:54 interface, a program interface, so it's the -- the
12:19:57 definition of the way the calls and the programs
12:20:01 interact.
12:20:02 Q Okay. And the first bullet point says, "A
12:20:06 single match API call should have ability to query
12:20:10 against Warner DB and/or YouTube DB."
12:20:15 Can you explain what that means?
12:20:17 A It appears to say that when we get a -- when
12:20:21 a match -- when an unknown is sent, that -- that
12:20:30 the -- the way -- the API call should be defined. It
12:20:34 should be able to query against both -- be looked up
12:20:40 against both the Warner database and/or the YouTube
12:20:44 database.
12:20:44 Q Okay. Can you explain, I don't think we've

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discussed yet, what is the Warner database?

A In this context, it is -- in the Phase I above, it has the Warner database, the database with Warner Music content.

Q Was that a custom database developed specifically for YouTube, or is that a database of Audible Magic's that was for use with all of its customers?

A As I talked about before, we have a master database, and we can segment that database and set up custom databases.

In this case, the Warner database would be we would take out -- we would copy all of the fingerprints of content that was owned by Warner -- registered by Warner Music and put that in a special database.

So it would be -- had been a custom database for this YouTube implementation.

Q Okay. And what is the YouTube DB?

A I -- I believe that the YouTube DB, in this time frame, was a database that was specifically for YouTube, and we, I believe, called it a submitted content database. So it gave the capability of YouTube to -- to take content and -- and generate

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fingerprints and put them into a separate database.

Q Okay. So that -- so is that another example of a customized database designed specifically for one customer, in this case YouTube?

A Yeah. In this case, actually, we -- in most cases, our database is -- the content is supplied by a copyright holder to us and then we deploy it in a database. In this case, in a YouTube database or a submitted content database, the site itself can submit fingerprints into a database.

Q Okay. And is that -- is that what -- is that how the YouTube database worked?

A I believe that is what this is referring to.

Q Okay. What kind of fingerprints would YouTube submit into the YouTube database?

A We provided the -- the feature, the functionality to let them register content. What they registered, we -- we really didn't know why or what was registered.

Q When you say "registered," I don't think that's a term we discussed before.

A I mean, put in the database, deployed in the database. So what content they deployed -- they register -- they put in this database, we didn't know.

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13:24:50 Q And it begins, "Gentleman, Vance has signed the agreement. Enclosed is the final."

13:24:55 Do you see that?

13:25:00 A Yes.

13:25:00 Q Do you know what agreement this is talking about?

13:25:02 A It's referring to the -- the service agreement that we signed with YouTube.

13:25:02 Q Okay. And turning your attention to the third page of the exhibit, is this the final version of the agreement, the service agreement between YouTube and Audible Magic?

13:25:07 A It appears to be, yes.

13:25:12 Q Okay. Okay.

13:25:18 Is it -- is it normal that when Audible Magic gets a new customer, it would take a number of months to negotiate a service agreement?

13:25:23 A Can you repeat that question? Is it --

13:25:25 Q Sure. Let me -- let me state it another way.

13:25:30 We had seen earlier that the first contact between YouTube and Audible Magic was in April of '06; correct?

13:25:37 A Yes.

13:25:43 Q This contract is dated October '06.

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database that was getting transactions in the first quarter of 2007.

Q And when the -- at that time, in the first quarter 2007, when the Audible Magic service went live on YouTube, do you recall what fingerprints YouTube had requested that their custom database be populated with?

A My recollection is that it was Universal Music content that was populating the database.

Q Do you recall why it was Universal Music?

A No.

Q Okay. Do you know -- did it always -- did it remain Universal Music or was -- were more fingerprints ever added to that?

A Other fingerprints were added over time.

Q Okay.

(Document marked Ikezoye Exhibit 10 for identification.)

MR. DESANCTIS: Let me show you what's being marked as Ikezoye Exhibit 10. I'll ask you to take a quick look at it. This is a multi-page document bearing the Bates No. AM836 through 844.

Q I'm just gonna ask you a couple of questions about the first couple of pages.

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A Okay.

Q Do you recognize this, Mr. Ikezoye, as the -- a chain of e-mails between people at Audible Magic and people at YouTube?

A Yes.

Q And the topmost e-mail is from Franck Chastagnol to Jim Schrempp, CC to Vance Ikezoye, dated August 17th, 2006, correct?

A Yes.

Q I'd like to direct your attention to the bottom of the first page. This is from Franck Chastagnol to Jim Schrempp, CCed to you, dated August 16, 2006.

At the bottom, Mr. Chastagnol writes, "Initially we will ask you to populate the reference fingerprint database with the catalog of only one of those companies. By the way, I assume this is something you can do; correct? But as we sign new contracts, we will add catalogs from other companies."

Do you understand what is meant by "signing new contracts"?

MS. REES: Objection; calls for speculation.

MR. DESANCTIS: Q. Well, I -- I'm asking -- I'm asking if you understood what is meant by this.

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You were CCed on it.

A Yeah, I believe it was a great licensing agreement between the companies.

Q Between what companies?

A YouTube and content owners.

Q Okay. So your understanding of the arrangement -- is it your understanding of the arrangement that as YouTube signed new contracts with content owners, YouTube would then request that that content owners' fingerprints be put into the YouTube custom database?

MS. REES: Objection; calls for speculation; hypothetical.

THE WITNESS: That was my understanding, and yes.

MR. DESANCTIS: Okay.

Q Is that -- is that hypothetical, or is that actually what happened, if you know?

MS. REES: Objection; calls for speculation.

THE WITNESS: I know, in general, that the database was a subset. I don't know if every piece of content in there was related to a company that had a licensing agreement.

MR. DESANCTIS: Okay.

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proposed that Audible Magic could also provide film and TV fingerprinting services, in addition to the music fingerprinting services, were you ever given an explanation from Maxcy or others why they were declining that offer?

A No.

Q Do you recall whether -- do you recall when the first time it was -- actually, let me withdraw that and ask it another way to be more clear.

When was the first time you recall Audible Magic proposing to YouTube that Audible Magic could include services for film and TV fingerprinting?

A I don't remember specifically when. My recollection is more of phone conversations, trying to sell and get some interest in using some of our other services, and there might have been other proposals more formally given. I can't remember the dates, though.

Q Okay. So when YouTube would submit a lookup fingerprint to Audible Magic, Audible Magic would then run that fingerprint against the fingerprints in the YouTube custom database; correct?

A Yes.

Q And only against the YouTube custom database?

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14:04:49 A No, those transactions were run against the YouTube custom database and the -- our YouTube submitted database, or in the terminology before, the YouTube database.

14:05:00 Q Okay. So it was run against the YouTube custom database and what we'll call the YouTube submitted content database?

14:05:09 A Yes.

14:05:09 Q Okay. And is the YouTube submitted content database the database that you testified about earlier that contained fingerprints submitted by YouTube?

14:05:30 A Yes.

14:05:30 Q Was YouTube the first to have such a submitted content database, the first customer?

14:05:39 A I believe so.

14:05:41 Q Okay. What was the -- what -- what -- what function does the submitted content database serve where the customer is providing its own fingerprints?

14:05:53 A Well, I don't know specifically for YouTube, but I can -- I know how certain other customers use it.

14:06:02 Q And how is that?

14:06:05 A Some customers use it to -- to -- if -- if a piece of content that the fingerprint isn't

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14:17:20 Q Okay. Let me direct your attention, Mr. Ikezoye, to what's already been marked as Exhibit -- Ikezoye Exhibit 9.

Do you have that document?

A Yes, I do.

Q Can I ask you to turn to page five of the -- I'm sorry. This is the e-mail attached -- with attached to it the final copy of the service agreement between YouTube and Audible Magic; correct?

A Correct.

Q Can I ask you, please, to turn to page five of that contract?

I'd ask you to read these terms in Section 4, under the title "Fees," and I'm going to ask you some questions about it.

A Okay.

Q Do these terms accurately reflect what YouTube pays Audible Magic for the content ID services Audible Magic renders?

A Yes.

Q Okay. Are there any additional fees or payments that YouTube makes to Audible Magic that are not listed here in Section 4 of the contract?

A There you -- there use -- there -- during the

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whole period of our relationship, no. There were some other fees that YouTube was paying us.

Q What were those?

A They were paying us for fees for services for -- to add Google Video to the service.

Q Do you recall what -- the size of those fees, approximately?

A I -- I -- they're around 20,000 -- $20,000 to $30,000, I believe, a month, I think.

Q And is YouTube or Google still paying those fees to -- to Audible Magic today?

A No.

Q When did it stop?

A Earlier this year, I believe.

Q Why did -- why did YouTube or Google stop paying those Google Video fees to Audible Magic?

A I believe Google shut down Google Video. That's my recollection.

Q Okay. So what -- what services was -- were Audible Magic providing to Google Video for these fees?

A Primarily, being able to use our -- to be able to provide a similar kind of transaction from YouTube for -- to our custom YouTube database, music

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database, to -- for Google Video as well.

Q Okay.

A Can I make one thing -- going back?

Q Yes.

A The Google Video contract seems to be 20,000, but I don't know that for sure.

Q Okay. Is there a separate written contract between Audible Magic and Google Video?

A Yes; there was an amendment to this contract.

Q Okay. Then -- then putting the Google Video contract aside and just looking at the Audible Magic relationship, can you -- can -- can you tell us what the fees are -- what they were and what they are today that YouTube is paying Audible Magic?

A When we originally did the agreement for the first period, the original term, it was $20,000 per month, and then there's a period of -- from January 1st, 2008, through December 31st, 2008, where the fees went up to $25,000 a month, and then there was an extension for 2009 and there is an option on an extension for 2010.

Q And was there a -- any sort of one-time lump sum additional fee owed to Audible Magic from YouTube at the beginning of the contract?

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14:24:05 A Yeah, there was a $200,000 amount due that
14:24:14 needed to be paid on execution.
14:24:16 Q Okay. So -- and did YouTube actually pay
14:24:19 Audible Magic $200,000 on execution of the contract?
14:24:22 A I believe so.
14:24:23 Q Okay. Is YouTube still using Audible Magic
14:24:31 content ID services today?
14:24:34 A Yes.
14:24:34 Q Is it still being governed by this same
14:24:37 contract?
14:24:38 A Yes.
14:24:38 Q Okay. Do you know what it would cost YouTube
14:25:05 to include in its custom database fingerprints from
14:25:15 Audible Magic's film and TV reference database?
14:25:24 A Not specifically, because the way our pricing
14:25:27 would go for this would be, we would need to
14:25:29 understand the transaction volume, and so
14:25:34 understanding the transaction volume, I could give you
14:25:37 a price.
14:25:38 Q Okay. If you assumed that the transaction
14:25:41 volume -- volume was the same as the transaction
14:25:47 volume covered in the existing contract that we're
14:25:50 looking at now, can you approximate what that price
14:25:55 would be?

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14:25:56 A My guess would be at least double the price
14:25:59 that's listed here.
14:26:00 Q Okay. Does that mean double the monthly fees
14:26:19 and double the one-time start-up fee? In other words,
14:26:22 would there be a new one-time start-up fee?
14:26:25 A It's all subject to negotiation, but we
14:26:27 probably wouldn't have a start-up fee, that one-time
14:26:30 fee. We would double the monthly fee.
14:26:34 Q I -- I'm sorry. You said you probably would
14:26:36 not have --
14:26:36 A Would not.
14:26:36 Q -- a start-up fee?
14:26:37 A We probably would not have a start-up fee.
14:26:40 Q But you would double the monthly fee?
14:26:45 A Right.
14:26:45 Q Okay. Do you recall whether YouTube's
14:27:24 testing of Audible Magic's content ID services began
14:27:30 at the time this contract was executed or whether it
14:27:33 began prior to that?
14:27:35 A I believe it was prior to the execution of
14:27:37 this contract.
14:28:14 MR. DESANCTIS: Okay. Can we go off the
14:28:15 record for two minutes and just take a very short
14:28:21 break.

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14:44:09 Q Okay.

14:44:09 A But it wasn't that the technology of the systems had to be -- it wasn't rocket science or

14:44:11 anything. We would just have to have it deployed.

14:44:15 Q I see.

14:44:19 So the technology was in place, it just hadn't been deployed?

14:44:20 A Right. Basically, yes.

14:44:22 Q Okay. And, well, what -- now I'm unclear.

14:44:24 Looking at the late 2005 time frame, to say that the -- the technology was in place, but it hadn't been deployed, what -- what does that mean exactly?

14:44:26 A It just means that we have the capability of taking a fingerprint, using our content identification fingerprinting technology to identify copyrighted content and to do a lookup against an ID server and to respond with an identification and business rules. That core technology has been working for years before that point.

14:44:35 Q Since when?

14:44:39 A That basic techno- -- that basic structure and architecture, Replicheck, you know, 2003 or 2004, it hadn't been deployed specifically to identify audio on a video, but the technology is the same.

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14:45:45 Q Okay. Can you just clarify that very last
14:45:54 sentence by saying "the technology is the same"?
14:45:59 A Up until, you know, the 2000 -- late
14:46:04 2005/2006 time frame, the technology that had been
14:46:07 primarily used to identify audio files, MP3 files for
14:46:16 copyrighted content. All that we did in doing these
14:46:20 video files, was to take out the soundtrack, the audio
14:46:26 track of the video and apply the same technology,
14:46:30 which is identifying the audio.
14:46:32 So around that 2005/2006 time frame is when
14:46:37 we had implemented the capability to do that
14:46:41 soundtrack, take that soundtrack off and apply our
14:46:46 base technology.
14:46:47 Q I see.
14:46:48 And could you have implemented that
14:46:50 technology earlier, had a customer asked you to do so?
14:46:56 A Yes.
14:46:56 Q Okay. How much earlier in the history of
14:47:06 Audible Magic's development?
14:47:07 A My guess is that easily the beginning of 2005
14:47:11 and probably 2004 kind of time frame.
14:47:16 Q Okay.
14:47:58 (Document marked Ikezoye Exhibit 14
14:47:59 for identification.)

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were removed before or after YouTube went live with the Audible Magic -- Audible Magic services?

A No, I can't remember.

Q Okay. Can I direct your attention back to Exhibit 14. On the second page, bearing the Bates No. AM4625, could you look at the middle e-mail and tell me if that refreshes your recollection?

A Well, reading this, it looks like David King from YouTube directed Lou, who was building the databases, to remove the Warner content from our -- the database build that we did for YouTube.

Q Okay. And do you recall why?

A No.

Q Okay. Mr. Ikezoye, I'm gonna change gears here and ask you questions about a different period of time and on -- and on a different topic.

Do you recall ever making a proposal to YouTube proposing that Audible Magic implement tests to fingerprint -- to look for fingerprint matches with content from MPAA members?

A Yes, I -- I -- I remember a document that we proposed that I don't remember the time frame of that.

Q Okay. When -- when -- I'm sorry.

I said MPAA. What's your understanding of

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what MPAA is?

A The Motion Picture Association of America.

Q And its members are?

A The film studios.

Q Okay. Do you know if Paramount is a member?

A Through Viacom, yes.

Q Okay.

(Document marked Ikezoye Exhibit 17 for identification.)

MR. DESANCTIS: I'll show you, Mr. Ikezoye, what is -- has been marked as Exhibit 17.

Q Is this the proposal that Audible Magic made to YouTube concerning searches for content owned by MPAA members?

A It is a proposal that we wrote about -- yes, about a pilot test.

Q Okay. When you say "we wrote," were you involved in writing this proposal?

A Most likely, yes.

Q Okay. And it's dated October 9th, 2006. Do you have any reason to believe that that's not when this proposal was created?

A No.

Q Okay. And do you recall ever making this

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was Chris Maxcy.

Q And what was the reception at YouTube to your proposals for searching of content owned by MPAA members?

MS. REES: Objection; mischaracterizes testimony; lacks foundation.

THE WITNESS: While they were never accepted, I don't believe there was much conversation regarding it.

MR. DESANCTIS: Q. Is that because -- is that because YouTube never showed much interest in the proposals, or is there another reason?

MS. REES: Same objections.

THE WITNESS: Sorry.

MS. REES: Also vague.

THE WITNESS: My perception was -- is that there was no -- there wasn't the interest in -- in utilizing us for anything more than music.

MR. DESANCTIS: Okay.

Q Do you know why?

A No.

Q And has YouTube, in fact, ever used Audible Magic for more than music?

MS. REES: Objection; asked and answered.

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for -- related to searching Audible Magic's databases for materials owned by MPAA members?

A Not that I'm aware of.

Q In Exhibit 17 that we've been looking at, the sixth black bullet point down bears the header "MPAA test."

Do you see that?

A Yes.

Q And the third white bullet point below that reads, "Audible Magic will subsidize its development cost for the modification of its service."

What does that mean?

A This kind of statement would mean that if we had any development costs to implement the test and to modify our existing service to YouTube, that we would subsidize and pay for some of the development costs.

Q And not pass that cost on to YouTube?

A Correct.

Q Okay. Why was Audible Magic willing to subsidize those development costs and not pass those on to YouTube?

A Because we would hopefully be able to sell the incremental -- the service and get more revenue from YouTube longer term.

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15:25:27 Q And the next black bullet point down says, "Test cost $10,000"; do you see that?

15:25:40 A Yes.

15:25:44 Q Is that the cost to Audible Magic or to YouTube?

15:25:44 A That would be the cost to somebody to help pay for this, this whole process that we've outlined above.

15:25:53 Q Okay. And would that be the total cost for this process?

15:26:00 A That's what -- the costs that we wanted to charge, yes.

15:26:03 Q Do you recall whether you ever communicated to YouTube that such a test would cost $10,000 and that Audible Magic was willing to subsidize its development costs?

15:26:07 A I don't know if this was communicated to YouTube.

15:26:29 Q Okay. The -- that same bullet point we were looking at previously that reads "Audible Magic will subsidize its development costs for the modification of its service," what type of modification might have been required in October of 2006 in order to perform this test?

15:26:32

15:26:52

15:26:54

15:26:57

15:27:01

15:27:06

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15:27:09 A Well, in the -- in this overview, we were talking about having fingerprint generation tools available to the studios to generate fingerprints, and there may have -- may or may not have been fingerprint modifications necessary for that. We would have to deploy other servers beyond the music database for this, and so there -- there might have been some costs with respect to that.

15:27:45 Q Okay. And would you -- would those modifications have been extensive based on the state of Audible Magic's technology in October 2006?

15:27:58 MS. REES: Objection; vague as to "extensive."

15:28:02 THE WITNESS: No. They were small changes, and so we could -- we could do all this.

15:28:10 MR. DESANCTIS: Q. Do you know whether Audible Magic ever actually made those kinds of changes, whether -- whether in the context of this proposal or -- or anything else?

15:28:28 A Well, today we do offer services to identify both music and film and television shows, and we provide tools to -- to studios, film and television studios and to fingerprint content and provide those -- that fingerprints -- those fingerprints to

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(Document marked Ikezoye Exhibit 18 for identification.)

MR. DESANCTIS: Q. Let me show you, sir, what's been marked as Exhibit 18.

A Okay.

Q This is a two-page document --

A Okay.

Q -- bearing the -- take -- take a look at it, and for the record I'll state that it bears the Bates Nos. GOO001-739564 through '65.

And, Mr. Ikezoye, I'd like to direct your attention to the last e-mail in this chain --

A Yep.

Q -- on page two.

A Okay.

Q Does this refresh your recollection of ever having been introduced to Adam Cahan?

A Well, obviously, yes, but I did receive an e-mail introduction to Adam at MT -- at MTV Viacom.

Q Okay. The e-mail at the bottom of the chain with -- the last e-mail in this document, on page two, is from Chris Maxcy to you, copied to Adam Cahan, dated December 5th, 2006, and the second -- starting with the second sentence, it reads, "We are

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confidently talking to Adam and his team about a partnership and wanted to get the two of you connected. Adam has a number of questions regarding how Viacom can get its content into the AM database."

Do you recall being involved in discussions with Viacom and YouTube regarding a potential partnership between Viacom and YouTube?

A I remember that -- that we were introduced to Viacom and MTV about getting their content into our database, and this refreshes my memory that, actually, Chris at -- Maxcy at YouTube made the introduction.

I do know, subsequently, that we did start to get their content in our database.

Q And was this introduction -- did this lead to the first time that -- that Audible Magic had dealt with Viacom, or had -- had you dealt with Viacom previously?

A This might have been the first substantial conversation with Viacom. I might have been in some meetings where somebody from Viacom was in the meeting, but this is probably the first -- the most substantial introductions and discussions.

Q What, if anything, do you recall about the dis- -- the discussions that you were involved in

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15:52:40 regarding a potential partnership between Viacom and
15:52:44 YouTube?
15:52:51 A I don't know if I knew that much about
15:52:53 exactly what YouTube and Viacom were -- were talking
15:52:57 about, what kind of relationship. I think, from this
15:53:01 point on, it was mostly a focus between Audible Magic
15:53:05 and Viacom or MTV to start getting content into our
15:53:13 database. Chris might have backed out from that
15:53:20 point.
15:53:20 Q What do you mean Chris backed out?
15:53:23 A Out of the -- out of this -- in this point
15:53:27 about the conversation. He might have just left it to
15:53:29 us. I'm not sure he was copied after that.
15:53:33 Q I see.
15:53:36 This is dated December 5th, 2006.
15:53:42 Do you recall when it was that Viacom
15:53:45 ultimately provided finger- -- began providing
15:53:50 fingerprints to Audible Magic?
15:53:51 A In the late first quarter of 2007 or early
15:53:54 second quarter of 2007, I believe. We have a report.
15:54:04 Q Yeah, if you want to --
15:54:05 A Yeah.
15:54:05 Q -- refer to that report --
15:54:06 A Yeah.

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15:54:06 Q -- that you reference, you -- you certainly
15:54:10 can.
15:54:11 A Yeah.
15:54:11 Q I think it was --
15:54:13 A 4A. Yeah, 4A kind of shows content
15:54:23 starting -- looks like April was the biggest load.
15:54:29 Yeah, April of 2007.
15:54:39 Q In April of 2007?
15:54:41 A Yes.
15:54:41 Q Okay.
15:54:42 A That's when the big bulk of fingerprints were
15:54:45 starting to get registered.
15:54:47 Q And do you recall who you were dealing with
15:54:49 at Viacom at that time? Was it Adam Cahan or someone
15:54:53 else?
15:54:53 A I believe we did -- I had a lot of
15:54:55 conversations with Nick Rockwell, and we had some on
15:54:58 and off conversations with -- with Joe Simon, but I
15:55:05 think Nick was the -- our prime contact.
15:55:07 Q And do you know if by that time, April 2007,
15:55:11 Viacom and YouTube had, in fact, entered into a
15:55:14 partnership together?
15:55:17 A No, I don't know that.
15:55:18 Q Okay. Do you know why Chris Maxcy introduced

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indicated on that first e-mail on the first page of this exhibit, and they're named Long -- Long From Video Proposal 3-10-07.pdf, and Music Type 3 Proposal 3-9-07.pdf.

Do you know what those are?

A Yeah, their proposals look -- that are attached here for identifying long-form video, as well as a more intensive advanced search of music.

Q What does long-form video mean?

A Generally, long-form video refers to longer pieces than just clips of a -- of a video. Whole videos or whole TV shows are generally viewed -- described as long-form content.

Q Okay. And what was the "Music Type 3"? What does that mean?

A We have a more advanced service for identifying music. Again, where, instead of a file being the whole song, if there was a subset of the song, say, 30 or 40 seconds of the song, we could still identify it.

Q And were these proposals that Audible Magic made to YouTube?

A Yes. From the look of this, yes, we made the formal proposal to them to do both.

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16:03:16 Q Okay. Other than this document, do you
16:03:18 recall those proposals? Do -- do you recall being
16:03:20 involved with those proposals?
16:03:21 A I think I was probably copied on it and --
16:03:26 and so, as I mentioned, we were always looking for
16:03:29 opportunities to sell more services to our customers
16:03:34 and YouTube also, and so, yes, this is one of the
16:03:39 times that we talked about it.
16:03:41 Q And do you know whether YouTube ever accepted
16:03:47 this proposal, these proposals?
16:03:50 A We are not providing any services today, so
16:03:53 we didn't sell them on these proposals.
16:03:56 Q Are you providing these services to any
16:03:59 customers?
16:04:02 A Yes.
16:04:02 Q Are you providing them to any UGC customers?
16:04:08 A Yes.
16:04:08 Q Can you testify as to which UG -- for which
16:04:42 UGC customers you're providing these services, the
16:04:46 long-form video, and the music type three?
16:04:49 MR. BLY: Objection to the extent that it
16:04:50 calls for the identity of customers that are subject
16:04:52 to a confidentiality agreement.
16:04:55 You can name the ones that have been publicly

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announced.

THE WITNESS: Yeah.

Veoh was a customer of these services, Microsoft was a -- Soapbox was a customer of these services.

MR. DESANCTIS: Q. Any others that you're -- that you can discuss?

A For some of the services, the long -- I think for the music, I think Nokia was a customer. I think we had a report, actually, that indicated some of the people that were using all these services.

Q Okay. And when you -- when you mention Veoh and Microsoft, I think this is the first mention of Veoh. What is Veoh?

A Veoh was a UGC site. Veoh was a video sharing site very similar to YouTube.

Q And when you said Veoh was a customer of these services, Microsoft Soapbox was a customer of these services, do you mean both the long-form video and the music type three?

A They were, for sure, the -- the video, and I'm unsure about the music.

Q Do you recall when it was that Veoh began using the long-form video service?

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16:06:26 A I believe they used it from the beginning, and -- but I'm not sure when that was exactly started.

16:06:34 Q Yeah.

16:06:34 Do you mean the beginning of Audible Magic's relationship with Veoh?

16:06:37 A Yes, from the -- from the -- the initial service was using that.

16:06:41 Q Okay.

16:06:48 A Five, five.

16:07:06 So it was at least August 2007. I don't know why this -- that's when all this started.

16:07:25 (Document marked Ikezoye Exhibit 20 for identification.)

16:07:25 MR. DESANCTIS: Show you, Mr. Ikezoye, what's been marked as Exhibit 20.

16:07:34 Q Do you recognize this?

16:07:35 A Yes, it's a -- our content services agreement with -- between Audible Magic and Veoh.

16:07:43 Q Okay. Do you recall, Mr. Ikezoye, when Soapbox, which is owned by Microsoft, first began using the long-form video service?

16:08:06 A No, I don't recall exactly when.

16:08:31 Q Okay.

16:09:03 ///

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audio fingerprinting service?

A It was an audio fingerprinting service.

Q Okay. But it was used to find matches with video files?

A Yes.

Q So how is it that a -- or why is it, if it's true, that an audio fingerprint would be effective in identifying a video file --

A Because --

Q -- if you agree that it is?

A It is.

Q Let me ask you that first.

Is it effective in identifying a video file?

A Yes, it is effective.

Q Why?

A Because you're just trying to identify a TV show or a movie, and a -- and a movie or a TV show has two components that can be used to identify it.

The video image or the soundtrack attached to it, they both will really uniquely identify one of those, that piece of content. And we use the soundtrack, the audio track of the video or the movie and it -- we found that it was doing a very good job at identifying TV and film content.

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(Document marked Ikezoye Exhibit 24 for identification.)

MR. DESANCTIS: Let me show you, Mr. Ikezoye, what's been marked as Exhibit 24. This is a one-page document bearing the Bates No. AM4623. Please take a look at this document.

THE WITNESS: Okay.

MR. DESANCTIS: Q. Do you recognize this as an e-mail from Lou Kvitek of Audible Magic to David King of YouTube?

A Yes.

Q Dated February 16th, 2007?

A Yes.

Q In it Mr. Kvitek describes, to use his words, "A summary of what we can do to address TV show soundtrack lookup. The first being content owner (i.e., Viacom) submit soundtracks with metadata to Audible Magic for registration in our video clip lookup database."

Do you see that?

A Yes.

Q He then offers additional -- additional information of what Audible Magic can -- can do for YouTube, and about three-quarters of the way to the

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bottom of the text, he says, "We have this type of lookup server ready to deploy. We need only order and install the servers and get content from the owners."

As the CEO of Audible Magic, do you agree that in February of 2007 Audible Magic had the type of lookup servers ready to deploy that are described in this e-mail?

MS. REES: Objection; lacks foundation.

THE WITNESS: We do -- did, at this time, have the technology and software ready to deploy.

MR. DESANCTIS: Q. And what does it mean that "we need only to order and install the servers"?

A That just means we needed to order and install the hardware computers to run the software on.

Q And -- and -- and to get content from the owners, what does that mean?

A And ensure that we got the reference fingerprints and the reference content from the copyright owners.

Q And, to your knowledge, did YouTube ever pursue the proposed services in this e-mail from Audible Magic?

A From its production -- putting it in production point of view, no, they -- they did not.

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